

Information Leaflet no. 2.

Know the law on:

The consent clause.

In 1998 Parliament passed a law giving the people rights on land which they had always owned, but without any documents. This law says that if, according to local custom, you are considered the owner of a piece of land, then the law of Uganda recognises you as the real owner. You don't need to have any title documents, and you should follow all the local rules which custom has laid down.

Parliament added one or two rules, which must also be followed together with the customary laws. One of these was a law to protect the families of those who wanted to sell land. The law says that if someone wants to sell land which they own, then the husband or wife of the person selling must agree to the sale if they depend on the land in some way. If they don't agree to sell the land, then the land can't be sold.

The spouse must give consent to any sale of land on family land. Family land means that it is used in some way for helping the family – e.g. it is farmed, or where the house is.

Questions and Answers

My land is held under customary tenure, Does this mean that the law doesn't apply to me?

The law applies on all land – whether it is held under customary tenure or with title.

People say that under our customary rules the wife does not own land. Land belongs to the husband. Doesn't that mean that the law does not apply to me?

Although customary rules are recognised, Parliament added rules which must be followed by everyone. The law says that if someone is selling land, then the husband or wife must sign to give consent.

I understand that this rule applies to my inherited land, but I also bought a plot of my own land, which my wife or husband does not have rights to. Does the consent clause still apply?

That depends on whether the land is used for the family. It doesn't matter

how you got the land, or whether or not the wife owns it with you – if the land is used for the family, then the law applies.

The LC has witnessed my sales agreement. Doesn't that mean that the sale is valid, even without the wife's signature?

No. Witnessing an agreement only means that you are confirming that the people who signed the document really did sign it. It doesn't make an agreement any more legal. Neither an LC nor anyone else can say that the wife's signature isn't necessary.

What happens if I don't follow the law? Can I be arrested?

If the wife has not signed a paper agreeing to the sale, then the sale is not valid. That means in law, the sale hasn't really happened. The buyer can ask for his money back and the seller has to refund the money he received for the land. If the buyer refuses, the wife can go to court.

Who is supposed to check if the wife gave her consent?

If you are buying land, you should make sure that the seller's wife or husband has written to say s/he agrees to the sale, otherwise the seller can always come and claim the land back. If you're selling land, make sure that you give the buyer a paper signed by your wife agreeing to the sale. If you're an LC, clan leader or any other official, you should help the buyer and seller by telling them about the consent clause and making sure that written consent was given.

Why are you trying to persuade us that a wife should have the right to stop a man from selling his land?

We are not trying to convince anyone about what the law should be. We are only helping people who want to buy or sell land, by telling them what laws Parliament has already made. This will help them prevent problems with land that they buy or sell.

Where can I get a form for my wife to sign?

Forms for land sales agreement and the consent clause were recently designed by the Ministry of Water, Lands and Environment. They have not been widely disseminated, but could be with your District Land Board. If you cannot find them, please contact LEMU at the address on this pack.

This leaflet has been prepared by LEMU. We hope it is useful in assisting you perform your duties or assert your land rights. Please let us know if you want to translate it to a local language in your area. If you have any other comments, or if you would like to make leaflets on any other topic, please contact us at: P. O. Box 23722, Kampala, telephone 0772 856212 or 041-576818. lemu@utlonline.co.ug